

Received at: 2:22PM, 2/12/2004

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	:	<b>Case No. 02-00157</b>
	:	<b>(Judge Dlott)</b>
<b>Plaintiff,</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>STEVE RENNICK, SR.</b>	:	
<b>vs.</b>	:	
<b>Defendant.</b>	:	
	:	
	:	
	:	<b>AFFIDAVIT OF STEVE RENNICK, SR.</b>
	:	

STATE OF OHIO )  
                  )  
                  ) ss:  
COUNTY OF HAMILTON )

Now comes Steve Rennick, the affiant under oath and based on his own personal knowledge and states as follows:

1. I am the Defendant in the above-referenced case.
2. When I was first arrested and charged with this case, my son and some of my very close friends were also charged as Co-Defendants on the same Indictment.
3. From the time of my arrest till the present, I've always maintained my innocence. Not only in Court, but in every single conversation I had with my attorney William Gallagher Sr.
4. It was told to me, after my son's case got dismissed, that if he testified truthfully and indicated that I was not involved in any illegal activity, that he would be indicted on possible perjury charges and maybe re-indicted on the original offense.
5. On the morning of the trial, I was asked by my attorney several times to enter a plea of guilty. I insisted that I was innocent and wanted a trial.
6. At some point during that morning, I was approached by one of my closes friends, Matthew Elliott, and we had a private conversation.

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7. Matthew conveyed to me that my taking this case to trial was jeopardizing his freedom, my son's freedom, and our friend Wayne's freedom.

8. Agent Mercardo told me that I would receive probation.

9. My attorney told me that agent Mercardo could get me probation if I cooperated.

10. I cooperated with him.

11. In the course of trying to help agent Mercardo rid this area of narcotics, I was shot and almost killed.

12. Prior to that, but after my plea, I wrote to my Judge, and told her that I was innocent and did not do the things I am accused of in the Indictment.

13. The night prior to my sentencing, I met with my attorney along with a friend of mine.

14. My attorney, William Gallagher, told me that since I was shot in this manner, I would probably receive probation plus because of my physical and mental disabilities, the Court would in all probability give me a downward departure.

15. However, his attitude at the sentencing was contrary to the attitude he displayed the night before at his office.

16. He kept telling me to be quiet during the Court proceeding when I wanted to adamantly state to the Court not only my innocence, but that agent Mercardo was not being honest in the things I had done for him in order to receive probation.

17. It was my understanding from listening to this Court at that Sentencing Hearing that I could not receive probation because of the mandatory nature of the charge in which I plead guilty to.

18. This is not what I was advised of by my attorney me and I've given no proffer nor any confession stating anything other than the fact that I am innocent.

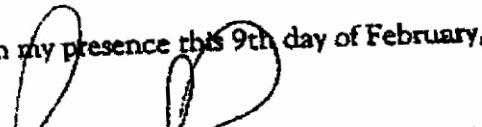
19. For these reasons, I am asking that this Court allow me to withdraw my plea of guilty and have my case set for trial.

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FURTHER AFFIANT SAYETH NAUGHT.

Steve Rennick Sr.  
Steve Rennick Sr.

Sworn to before me and subscribed in my presence this 9th day of February, 2004.

  
Notary Public  
GALIND L. PORTER  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 07-03-08

My commission expires: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA : CR-1-02-157-3  
: GOVERNMENT'S RESPONSE  
v. : TO DEFENDANT'S MOTION  
: TO WITHDRAW PLEA  
: STEVEN RENNICK, SR. : J. Dlott

The defendant has filed a motion to withdraw his plea after sentence. Since the Court is without jurisdiction to entertain this motion, it should be denied.

Memorandum

Rule 11 of the Federal Rules of Criminal Procedure (F.R.Cr.P.) governs guilty pleas and the withdrawal of guilty pleas. Rule 11(d) allows a defendant to seek to set aside his plea of guilty, before sentencing, under certain circumstances outlined in the Rule. Rule 11(e) prohibits the withdrawal of a guilty plea after sentence is imposed. The Rule states:

After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

The defendant appeared for sentencing in this case on January 28, 2004. The Judgment and Conviction Order was entered on January 30, 2004. Accordingly, this Court is without authority to entertain a motion to withdraw a guilty plea filed after sentencing.

[DE-163 P1 JA-96] #163

Respectfully submitted,

GREGORY G. LOCKHART  
United States Attorney

s/Robert C. Brichler

ROBERT C. BRICHLER (0017745)  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Government's Response To Defendant's Motion To Withdraw Plea was served this 12<sup>th</sup> day of February, 2004, electronically on Kenneth L. Lawson, Attorney for Defendant Steven Rennick, Sr.

s/Robert C. Brichler

ROBERT C. BRICHLER (0017745)  
Assistant United States Attorney

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	:	Case No. 02-00157
Plaintiff,	:	(Judge Dlott)
	:	
vs.	:	
	:	
<b>STEVE RENICK, SR</b>	:	
	:	<b>MOTION TO STAY</b>
	:	<b>EXECUTION OF SENTENCE</b>
<b>Defendant.</b>	:	<b>(DELAY SURRENDER DATE)</b>
	:	<b><u>AND A STAY AWAY ORDER</u></b>

Now comes the Defendant, by and through Counsel, and hereby moves this Court to extend his surrender date, and issue a Stay Away Order to the arresting agent who is a witness in several of the pending motions brought by the Defendant and to the rumored agency that witness works for and with.

This motion is supported by the following memorandum.

**MEMORANDUM**

**A. MOTION TO EXTEND SURRENDER DATE**

As this Court is aware, Counsel was recently retained and has recently filed several motions that require Evidentiary Hearings. It is imperative that the Defendant be able to assist Defense Counsel while these motions are pending. If the Defendant has to surrender to Federal authorities prior to the hearing of these motions, Counsel will be at a severe disadvantage in preparing for Trial. Counsel will be limited to speaking to the Defendant on an unsecured telephone line at whatever Federal institution the Defendant is incarcerated in. These Motions essentially revolve around conversations that the Defendant and others have had with the agent involved in this case along with others. The case is two years old and there are many things that

have happened over the last two years making it imperative that frequent meetings between the Defendant and Counsel take place.

**B. STAY AWAY ORDER**

Every since the Defendant filed these motions (which essentially attacks the credibility and character of agent John Mercado) Agent Mercado and others, who the Defendant believes are RENU agents, have been harassing, stalking, and even arresting the Defendant on a charge that dates back to 2002 and involves the forfeiture of the tractor-trailer at issue in this case. On Sunday, February 15, 2004, the Defendant was arrested by RENU Agents on a direct Indictment involving a charge of Theft By Deception. The charge is based on the tractor-trailer that was seized and alleged to have been used in the transportation of the marijuana, which is the basis of the criminal charges before this Court. The State alleges that the Defendant did not tell the bank that the truck was in the possession of the Government when the bank extended his loan in 2002. The Defendant and others deny this. In fact, Counsel spoke with Counsel who represented the Defendant in the Civil Forfeiture, and Counsel represented to the State Court Judge at the Bond Hearing for the Charge of Theft by Deception that Counsel and the Defendant notified the State of Ohio and the Magistrate Judge handling the Forfeiture that the bank had to be notified because the bank had a lien hold interest in the seized truck.

Since 2002 to the present date, the bank has not sent any correspondence nor have they threatened the Defendant with any type of criminal prosecution. In fact, the Defendant has done business on a frequent basis with the bank where he personally talks to individuals in the bank and has a very good relationship with his bank.

The bank did not threaten to sue the Defendant for the balance nor did the bank in the last two years ever threaten to prosecute the Defendant.

Counsel for the Defendant believes this charge was brought at this time not because the Defendant committed Theft By Deception but as a way of retribution for the Defendant filing motions. Motions that allege the agent in charge of this case was not being honest with the Federal Court when the agent stated that the Defendant had done nothing to warrant a 5K1 reduction in his sentence.

As this Court is aware, pre-trail services meets weekly with the Defendant and has reported that the Defendant has abided by all conditions of his bond. Secondly, at his sentencing, and even at his plea, the rumored agents never brought to the Court or to the Defendant's attention that there was an outstanding matter of a possible Theft by Deception charge that could be filed against Defendant.

Considering the nature of the allegations that are contained in the Defendant's motions which again are directed towards leading Agent Mercado and considering the facts as stated above, Counsel is respectfully requesting that this Court issue an order requiring leading Agent Mercado and his fellow officers to stay away from the Defendant's place of business, and the Defendant's residence, and the Defendant himself until these motions are resolved. If RENU or any agent believes that the Defendant has committed and offense and would like to charge him, Counsel is respectfully requesting that this Court order the agent to contact Defense Counsel who will turn Mr. Rennick in to the proper authorities so that he may be processed for any new charges that RENU intends to bring. This will allow law enforcement to continue to perform their work, and it also recognizes the Defendant's right under the Sixth Amendment to Counsel and requires the agents to honor that right by contacting Counsel and not having any direct contact with the Defendant.

For the foregoing reasons, the Defendant respectfully request that this Court issue an order extending the Defendant's surrender date and issue an order requiring Agent Mercado and other RENU agents to stay away from the Defendant.

Respectfully submitted,

/s/Kenneth L. Lawson (0042468)  
Kenneth L. Lawson (0042468)  
Ayanna E. Love (0074473)  
Kenneth L. Lawson & Associates  
The Dominion Building  
808 Elm Street  
Cincinnati, Ohio 45202  
(513) 345-5000  
(513) 345-5005 Fax

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was electronically filed with the Clerk of Courts using the CM/ECF system on this 19th day of February 2004, which will notify Robert Brichler, Assistant U.S. Attorney, via electronic email notification.

/s/ Kenneth L. Lawson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA : CR-1-02-157-3  
: :  
: :  
v. : GOVERNMENT'S RESPONSE TO  
: DEFENDANT'S MOTION TO STAY  
: SURRENDER DATE AND STAY  
: AWAY ORDER  
: :  
STEVEN RENNICK, SR. : J. Dlott

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The defendant has filed a motion to extend his surrender date and for a "Stay Away Order" to the arresting agent in this case. The motions should be denied.

MemorandumA. Extension of Surrender Date

The defendant has filed two post-sentencing motions with this Court. The government has previously responded to both. It continues to be the government's position, supported by the case law cited, that the Court is without jurisdiction to entertain either motion, and they should be denied. The defendant has already requested one delay in his date to report for his sentence. The stated reason was that he needed time to get his business and health affairs in order. The Court extended the date over the objection of the government to March 26, 2004. He now requests an additional unspecified delay to assist his attorney in the motions that the law dictates may not be entertained after sentence. Accordingly, the government

strenuously objects to any further delay of the execution of the defendant's sentence.

**B. Stay Away Order**

After the defendant was sentenced in this case, he was indicted by a grand jury in Hamilton County, Ohio for theft by deception. The defendant was arrested on that indictment and the case is proceeding through the State of Ohio court system. The defendant will have the opportunity to defend himself on that charge in the Common Pleas Court. The defendant does not cite (nor does there exist) any authority for this Court to issue orders prohibiting police officers for the State of Ohio from performing their duties. If, indeed, the defendant has committed or does commit additional offenses to further add to his felonious record, the State of Ohio has every right to prosecute him. It is absurd to even ask this Court to require State law enforcement officers to first notify defense counsel and request that his client surrender if any additional charges are brought.

Conclusion

For the foregoing reasons and based upon the authority cited in the government's previous responses, this Motion should be denied.

Respectfully submitted,

GREGORY G. LOCKHART  
United States Attorney

s/Robert C. Brichler  
ROBERT C. BRICHLER (0017745)  
Assistant United States Attorney  
Attorney for Plaintiff  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Government's Response To Defendant's Motion To Stay Surrender Date And Stay Away Order was served this 23<sup>rd</sup> day of February, 2004, electronically on Kenneth L. Lawson, Attorney for Defendant Steven Rennick, Sr.

s/Robert C. Brichler  
ROBERT C. BRICHLER (0017745)  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

United States

: Case No. CR-1-02-157-3

Plaintiff

: District Judge Susan J. Dlott

v.

: ORDER

Steven Rennick, Sr.

Defendant

This matter comes before the Court on Defendant Steven Rennick, Sr.'s Motion to Reconsider (doc. #149), Motion to Withdraw Plea (doc. #162), and Motion to Stay Execution of Sentence (Delay Surrender Date) and [for] a Stay Away Order (doc. #166).

First, Mr. Rennick has asked the Court to reconsider his sentence. In particular, he asks the Court to permit him to present evidence that he is entitled to a downward departure because he has given substantial assistance to the government. 18 U.S.C. § 3582(c) provides that once a term of imprisonment has been imposed, the district court may modify the term of imprisonment only (1) upon motion by the Director of the Bureau of Prisons, (2) where the defendant has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(o), or (3) as otherwise expressly permitted by statute or Federal Rule of Criminal Procedure 35. Rule 35 provides only that, within seven days after sentencing, "the court may correct a sentence that resulted from arithmetical, technical or other clear error" and that the court may reduce a

sentence in certain circumstances upon the government's motion. The Court has already imposed sentence, including a term of imprisonment, on Mr. Rennick. Since none of the circumstances in which the district court may modify a term of imprisonment once it has been imposed applies here, the Court is without jurisdiction to entertain Mr. Rennick's request. Therefore, his Motion to Reconsider (doc. #149) is **DENIED**.

Next, Mr. Rennick has moved to withdraw his guilty plea on the grounds that the United States breached its plea agreement by failing to move for a downward departure under United States Sentencing Guidelines § 5K1.1 and that his previous counsel was ineffective in failing to request a hearing on the issue of whether Mr. Rennick has provided substantial assistance to the government. Rule 11(e) of the Federal Rules of Criminal Procedure provides that after the court has imposed sentence, a defendant may not withdraw his or her plea of guilty; "the plea may be set aside only on direct appeal or collateral attack." As this Court has already imposed sentence, Mr. Rennick may have his plea set aside only on direct appeal or collateral attack. Mr. Rennick's Motion to Withdraw Plea (doc. #162) is therefore **DENIED**.

Finally, Mr. Rennick moves for an extension of his voluntary surrender date, as well as an order mandating that certain federal agents "stay away" from Mr. Rennick, his residence and his place of business until Defendant's other motions are resolved. Mr. Rennick's Motion to Stay Execution of Sentence (Delay Surrender Date) and [for] a Stay Away Order (doc. #166) is **GRANTED IN PART** and **DENIED IN PART**. It is denied to the extent that it requests a "Stay Away Order," as Mr. Rennick has provided no authority that such an order would be appropriate or permissible and because to the extent that the motion requests an order prohibiting agents to "stay away" from Mr. Rennick, his residence and his place of business until his other

motions are resolved, it is moot. However, the Court will grant a brief extension of Mr. Rennick's surrender date so that he may work with counsel in seeking to persuade the United States to move for a reduction in sentence under Rule 35(b) and in resolving charges pending against Mr. Rennick in state court. Accordingly, Mr. Steven Rennick, Sr. shall surrender for service at the institution designated by the Bureau of Prisons as notified by the United States Marshal but no sooner than April 15, 2004.

IT IS SO ORDERED.

s/Susan J. Dlott  
Susan J. Dlott  
United States District Judge

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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF OHIO

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WESTERN DIVISION

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UNITED STATES OF AMERICA, : CRIMINAL ACTION 1:02cr157  
Plaintiff, : Cincinnati, Ohio  
: Wednesday, January 28, 2004  
-vs- :  
STEVEN RENNICK, SR., : Sentencing Hearing  
Defendant. : 10:00 a.m.

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SUSAN J. DLOTT, JUDGE

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For the Plaintiff: Robert C. Brichler, Esq.  
Asst. U.S. Attorney  
Atrium II, Suite 400  
221 East Fourth Street  
Cincinnati, Ohio 45202

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For the Defendants: William R. Gallagher, Esq.  
Arenstein & Gallagher  
The Citadel  
114 East 8th Street  
Cincinnati, Ohio 45202

Courtroom Deputy: Vicki Penley  
Court Reporter: Betty Schwab

1 PROCEEDINGS

2 THE COURTROOM DEPUTY: Your Honor, the first case  
3 this morning is CR-1-02-157, defendant three, United States  
4 of America versus Steven Rennick, Sr.

5 Would Defendant and counsel please step to the  
6 podium?

7 THE COURT: Good morning to everyone.

8 MR. GALLAGHER: Judge, if I may, sort of a  
9 related or unrelated matter?

10 THE COURT: Certainly.

11 MR. GALLAGHER: I share office space with Herbert  
12 Haas, an attorney in Cincinnati who unfortunately took  
13 rather ill.

14 (Off the record.)

15 THE COURT: Okay. Will counsel please enter  
16 their appearances for the record?

17 MR. BRICHLER: Robert Brichler for the United  
18 States.

19 MR. GALLAGHER: William Gallagher on behalf of  
20 Mr. Steven Rennick.

21 THE COURT: And are you Steven Rennick, Sr., sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And are you represented in this  
24 proceeding by William Gallagher, an attorney who is present  
25 here in court with you today?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Would you be more comfortable  
3 sitting, Mr. Rennick?

4 THE DEFENDANT: No, Your Honor. I'm fine. Thank  
5 you very much.

6 THE COURT: On a former day, the defendant  
7 pleaded guilty to conspiracy to distribute in excess of 100  
8 kilograms of marijuana. At that time, the matter was  
9 referred to the United States Probation Department for a  
10 presentence investigation and report. The Court has  
11 received the presentence report which was prepared October  
12 24, 2003. The Court has also received and reviewed the  
13 following documents relevant to sentencing: One, a letter  
14 from the defendant dated December 2, 2003, and, secondly,  
15 the defendant's motion for downward departure which was  
16 filed January 26 of this year.

17 Let me ask counsel, Mr. Brichler, have you  
18 received a copy of these documents.

19 MR. BRICHLER: Yes, I have, Your Honor.

20 THE COURT: And, Mr. Gallagher, have you received  
21 a copy of the documents?

22 MR. GALLAGHER: Yes, Your Honor.

23 THE COURT: And, Mr. Rennick, have you received a  
24 copy of the documents?

25 THE DEFENDANT: Yes, Your Honor.

1                   THE COURT: Have you had an opportunity to  
2 discuss them with Mr. Gallagher?

3                   THE DEFENDANT: Yes, Your Honor.

4                   THE COURT: All right. Then I would now like to  
5 address the factual findings for sentencing. The Court  
6 will accept the presentence report as part of the  
7 sentencing facts in this case and will proceed to address  
8 any additional sentencing facts the parties wish to  
9 present.

10                  Let me ask counsel, are any of the facts reported  
11 in the presentence report disputed by the defendant or by  
12 the government? Mr. Gallagher?

13                  MR. GALLAGHER: No, Your Honor.

14                  THE COURT: Mr. Brichler?

15                  MR. BRICHLER: No, Your Honor.

16                  THE COURT: Mr. Brichler, any additional  
17 sentencing facts?

18                  MR. BRICHLER: No, Your Honor.

19                  THE COURT: Mr. Gallagher, any additional  
20 sentencing facts?

21                  MR. GALLAGHER: No, ma'am.

22                  THE COURT: Then, there being no objections to  
23 the factual statements contained in the presentence report,  
24 the Court adopts those statements as its findings of fact.

25                  The defendant has entered a valid plea to count

1 one of the indictment. Accordingly, the defendant is  
2 adjudged guilty of case number 1:02cr157(3)SJD, conspiracy  
3 to distribute in excess of 100 kilograms of marijuana.

4 Pursuant to 18 United States Code Section 3553,  
5 the Court makes the following findings of relevant fact  
6 significant to the imposition of sentence. The defendant  
7 is guilty of violating 21 United States Code Section 846  
8 and 841(a)(1) and (b)(1)(B), which is a class B felony, and  
9 it subjects the defendant to a maximum of 40 years with a  
10 mandatory minimum of five years imprisonment, a two million  
11 dollar fine, a period of supervised release of at least  
12 four years and a \$100 special assessment. However, the  
13 Sentence Guidelines Manual controls the determination of  
14 the sentence in this case.

15 Next I'm going to deal with the issue of  
16 objections. Are there any objections to the presentence  
17 report that have not been previously raised, Mr. Gallagher?

18 MR. GALLAGHER: No, Your Honor.

19 THE COURT: Mr. Brichler?

20 MR. BRICHLER: No, Your Honor.

21 THE COURT: All right. Then the Court notes that  
22 there are no objections from either the defendant or the  
23 government as to the application of the Guidelines or facts  
24 contained in the presentence report.

25 Let me go over with you what the applicable

1 Guidelines are. The defendant pled guilty to count one of  
2 an indictment charging him with conspiracy to distribute in  
3 excess of 100 kilograms of marijuana in violation of Title  
4 21 United States Code Sections 846 and 841(a)(1) and  
5 (b)(1)(B).

6 In accordance with the provisions of 18 United  
7 States Code Section 3553, the Court places on the record  
8 the following statement of reasons. The Guideline for the  
9 offense of conspiracy to distribute in excess of 100  
10 kilograms of marijuana is found at United States Sentencing  
11 Guideline Section 2F1.1(a). According to that section, the  
12 defendant's base offense level is 26. Because the  
13 defendant distributed at least 100 kilograms but less than  
14 400 kilograms of marijuana, the offense level is decreased  
15 by three levels pursuant to Section 3E1.1(a) and (b)  
16 because the defendant accepted responsibility for his  
17 criminal conduct and entered a timely plea of guilty. The  
18 total offense level is therefore 23.

19 The Court finds the defendant's criminal history  
20 places him in category II. Based on a total offense level  
21 of 23 and a criminal history category of II, the Guideline  
22 imprisonment range is 60 to 63 months, and, even though  
23 that's not what appears in the Guideline table, I figured  
24 out last night that it's 60 because of the five-year  
25 mandatory minimum.

1                   The Guideline term for a period of supervised  
2 release is at least four years pursuant to Sentencing  
3 Guideline Section 5D1.2(b). Pursuant to Sentencing  
4 Guideline Section 5B1.1 and 5C1.1, the Guidelines do not  
5 authorize a sentence of probation.

6                   The Guideline range for a fine is from \$10,000 to  
7 two million dollars, and there is a \$100 special assessment  
8 which is mandatory.

9                   Let me ask counsel: Do you have any questions  
10 about the statutory or Guideline provisions applicable to  
11 the imposition of punishment in this case? Mr. Gallagher?

12                  MR. GALLAGHER: No, Your Honor.

13                  THE COURT: Mr. Brichler?

14                  MR. BRICHLER: No, Your Honor.

15                  THE COURT: All right. Then we will now proceed  
16 to the sentencing, and at this time the Court will  
17 entertain anything the parties wish to say in mitigation or  
18 aggravation of sentence. Mr. Gallagher?

19                  MR. GALLAGHER: If I could have just one thing  
20 marked as an exhibit, I would appreciate it.

21                  THE COURT: Certainly. You want to call it  
22 Defendant's Exhibit 1?

23                  MR. GALLAGHER: That would be fine, thank you.

24                  I spoke to Mr. Brichler about it. What that is,  
25 it is a copy of Mr. Rennick's Veteran's Administration

1 Hospital records as of Monday. They printed those out for  
2 me, because he was last seen, in fact, Monday morning by  
3 them. I am not giving you everything. There is medication  
4 records there and everything else like that, but obviously  
5 I don't have to include in that, but I would ask you to at  
6 least consider that in conjunction with my motion for  
7 downward departure. The records are at least referenced in  
8 my motion for downward departure.

9 The six-page motion that I filed, I think pretty  
10 well establishes what our argument is, is that the person  
11 who is before you, Mr. Rennick, presents you with a factual  
12 scenario post plea that is outside, I think, what was  
13 contemplated by the Sentencing Guidelines, specifically  
14 somebody who agrees to cooperate with law enforcement in  
15 the apprehension or prosecution or investigation of other  
16 people involved in illegal narcotics trafficking who finds  
17 himself, as a result we contend, shot and permanently  
18 injured as a result of his cooperation.

19 And I'm not assessing blame nor laying any blame.  
20 It's a risky proposition that people undertake, and there  
21 is some assumption of the risk above. But, as you see in  
22 the medical records, besides the fact he has a rod placed  
23 in his thigh and the surgery was performed afterwards, his  
24 post traumatic stress disorder, which was a pre-existing  
25 condition has been somewhat aggravated by those events.

1 And I think that is a factual scenario that has never been  
2 contemplated in the Guidelines, because they did talk about  
3 military service in the Guidelines, and those are pretty  
4 well talked about. But, unless you have an extraordinary  
5 act while in the military, the fact that you bravely served  
6 your country doesn't warrant a departure.

7 Cooperation can lead to departure, but normally  
8 it's when there has been successful arrests or prosecutions  
9 of other people, not just investigations that are  
10 undergone. And people who suffer from mental illness  
11 normally don't receive departures, because that is also  
12 contemplated in the Guidelines as well. But I think the  
13 fact that, where there is cooperation and a pre-existing  
14 condition, and it's all exacerbated afterwards and takes  
15 him into an area where he never thought he would be, which  
16 is with a rod in his leg and now having some real  
17 difficulty in dealing with his mental health condition. It  
18 seems to be a lot better in the last week or two weeks,  
19 according to the medical records, but, for the month, month  
20 and a half after November 7th when he was shot, he was  
21 having some real, real difficulties with memory, with  
22 sleeping, with anxiety, with a lot of the conditions that  
23 we seem to see symptomatically in post traumatic stress  
24 disorder.

25 And it's for all those reasons stated in the

1 motion, I think the Guidelines allow for you to take all  
2 those things into consideration and to depart, even though  
3 we don't have a motion from the government.

4 Like I said, I don't apportion any blame. As I  
5 mentioned in my motion, I understand that the government  
6 will come in and almost always file a motion when they  
7 believe there has been substantial assistance. And this  
8 cooperation didn't lead, I think, to what would be  
9 characterized as substantial assistance, and I understand  
10 that, but it was also cut short in terms of Mr. Rennick's  
11 continued activity, obviously, with his being shot at his  
12 place of work.

13 I'd ask you to take those into consideration and  
14 depart downward to where the Court feels it is an  
15 appropriate sentence, taking into account his  
16 co-defendants' activities, his background and his condition  
17 and depart appropriately.

18 THE COURT: Thank you, Mr. Gallagher.

19 Mr. Rennick, anything you would like to say, sir?

20 THE DEFENDANT: Not really, Your Honor.

21 THE COURT: All right. Mr. Brichler, anything  
22 you would like to say?

23 MR. BRICHLER: Your Honor, I would just like the  
24 record to be clear that, as the Court is well aware, our  
25 office is generally fairly liberal when it comes to filing

1 motions for downward departure based upon cooperation, and,  
2 having spoken to the case agent in this matter, I became  
3 convinced that whatever happened to Mr. Rennick was  
4 basically caused by his inability to follow the requests  
5 and the guidance of the agents who were attempting to work  
6 with him.

7 I do have Agent Mercado in the courtroom, and  
8 he's prepared if the Court wishes to hear him explain what  
9 happened here in the course of Mr. Rennick's attempted  
10 cooperation and the fact that there was really limited, if  
11 any, cooperation because Mr. Rennick would not follow the  
12 requests and advice of the agents.

13 So that's the reason we haven't filed it. We  
14 don't believe that he has provided substantial assistance,  
15 and we don't intend to ask the Court for a downward  
16 departure.

17 THE COURT: Mr. Gallagher, you have a quizzical  
18 look on your face.

19 MR. GALLAGHER: Not really quizzical. And I  
20 accept that, and that is why I have not even filed any sort  
21 of motion demanding that the government uphold what might  
22 be it's end of the bargain. I understand where these  
23 motions normally come from is when they get what they  
24 consider a substantial amount of information and  
25 identification of other people, and that's why I don't

1 blame anybody, nor do I say that you should be somewhat at  
2 a loss for why the government didn't file its motion.

3 Mr. Rennick had some choices to make after  
4 November 7th. One was to continue on his path to see if he  
5 could continue to find somebody or people that might  
6 satisfy the government or to just cease those activities.

7 It's no one's fault. By way of the government,  
8 I'm not blaming Agent Mercado, RENU or Mr. Brichler, but it  
9 was well known, while this case was pending, and I know the  
10 agent knew that Mr. Rennick served in Vietnam. He suffers  
11 from PTSD, and it has some psychological components to it.  
12 That's Mr. Rennick's cross to bear, and maybe the  
13 investigation should have been cut off earlier if he wasn't  
14 following orders. That's no one's fault. They were  
15 allowing Mr. Rennick the opportunity to attempt to avail  
16 himself of a potential 5K1.1 motion.

17 I don't think at all he blames the government or  
18 says the government has any obligation whatsoever to file a  
19 motion. I accept Mr. Brichler's representation that they  
20 don't think he provided that, and I don't think that that's  
21 a reason for me to sit here and jump up and down and say he  
22 should have gotten that 5K1.1. But I do think there is  
23 another avenue under the Guidelines for Mr. Rennick to  
24 avail himself because of other circumstances, not the  
25 substantial assistance, but other circumstances that are

1 extremely unique, I would submit to the Court, with  
2 somebody who suffered from PTSD whose action and  
3 involvement and attempt to involve himself with the  
4 government investigations has led to an exacerbation of  
5 that condition by I think extraordinary means. So it would  
6 be something that the stress of being involved in this did,  
7 that would be one thing. But to be shot and ambushed at  
8 your place of work and to the point where you had surgery  
9 and had a rod placed in your leg and may be walking with a  
10 cane for the rest of your life I think is something the  
11 sentencing commission never ever thought about at all when  
12 they thought about how to deal with mental illness issues,  
13 veteran's issues and things of that nature.

14 So I guess what I'm saying, I don't think I need  
15 Agent Mercado to explain why they didn't do what I accept  
16 they don't have to do.

17 THE COURT: I understand your position, I believe  
18 completely, Mr. Gallagher. And I think I understand  
19 Mr. Brichler's.

20 Mr. Brichler, do you think that having Agent  
21 Mercado testify would enlighten the Court at all?

22 MR. BRICHLER: I don't know that the details  
23 would really enlighten the Court. In view of what  
24 Mr. Gallagher is saying here, I really don't think it's  
25 necessary. I think the Court is in possession of

1 sufficient information to fashion a sentence.

2 THE COURT: All right. Okay. Then anything  
3 further to come before the Court before the Court announces  
4 the sentence?

5 MR. GALLAGHER: No, ma'am.

6 THE COURT: Thanks everyone.

7 Then it's the duty of the Court to sentence the  
8 defendant at this time. However, counsel will have a final  
9 chance to make legal objections before the sentence is  
10 actually imposed.

11 Pursuant to the Sentencing Reform Act of 1984,  
12 it's the judgment of the Court that the defendant be hereby  
13 committed to the custody of the Bureau of Prisons for a  
14 term of 63 months on count one.

15 THE DEFENDANT: Oh, shit. Your Honor --

16 THE COURT: And let me explain to you, I have  
17 reviewed your case very carefully, Mr. Rennick. This was a  
18 complicated drug deal, and, from all that I have read, all  
19 that I can determine from the documents, I think you played  
20 a major part in it, if not the major part.

21 THE DEFENDANT: But, Your Honor, I was promised  
22 by Mercado probation.

23 MR. GALLAGHER: Shhhhhh.

24 THE DEFENDANT: No. I can't shhhhhh. I've got  
25 witnesses that Mr. Mercado told me I would get probation

1 from working with him. I have tapes of him. These deals  
2 went through. He left me hanging. I called his house on a  
3 Sunday when this drug dealer was calling me, and his wife  
4 answered the phone, said he wasn't there, and the next time  
5 the answering machine. The guy told me he was going to  
6 kill me. Mercado knew that.

7 I had another deal, and they had all their cars  
8 parked out in the back. They guy drove around the parking  
9 lot, and he called and said "You're a cop." I mean these  
10 guys are unbelievable. I did everything I could for them  
11 people. He promised me probation. I'm working to get  
12 killed.

13 And he can get on the stand. I have tape  
14 recordings of him.

15 THE COURT: Let me finish the sentence, and then,  
16 Mr. Brichler, if you want to again put on testimony, you're  
17 welcome to.

18 Or, Mr. Gallagher, if you would like to question  
19 Agent Mercado, I'll let you put that on the record.

20 The defendant shall participate in the Bureau of  
21 Prisons Inmate Financial Responsibility Program. The  
22 defendant shall participate in the mental health evaluation  
23 and/or mental health counseling at the direction of the  
24 Bureau of Prisons.

25 Following the sentence of imprisonment, the

1 defendant is ordered to be placed on supervised release for  
2 a period of four years. Upon release from incarceration,  
3 the defendant is ordered to report in person to the  
4 probation office in the district to which he is released  
5 within 72 hours.

6 As a condition of supervised release, the  
7 defendant shall pay any unpaid balance of his fine. The  
8 defendant shall not commit another federal, state or local  
9 crime and is prohibited from possessing a firearm or other  
10 dangerous device. The defendant shall not possess any  
11 illegal controlled substances. And, in addition, the  
12 defendant shall comply with the standard conditions of  
13 supervised release as adopted by the Court for the Southern  
14 District of Ohio.

15 As a special condition of supervised release, the  
16 defendant is ordered to refrain from any unlawful use of a  
17 controlled substance and to submit to one drug test within  
18 15 days of release and at least two periodic drug tests  
19 thereafter.

20 The Court finds that the defendant is capable of  
21 paying a fine. Accordingly, the Court orders that a fine  
22 in the amount of \$10,000 be imposed. The fine is due  
23 immediately. Interest shall accrue on any unpaid balance.

24 The defendant shall participate in the mental  
25 health treatment deemed appropriate by the probation

1 officer. The defendant shall provide the probation officer  
2 access to all requested financial information.

3 Furthermore, the defendant is not permitted to open any new  
4 lines of credit until his fine and special assessment are  
5 paid in full, and a special assessment of \$100 is owed and  
6 due immediately.

7 Mr. Rennick, Mr. Gallagher, do you want me to  
8 make a recommendation as to which facility you be sent to?

9 I don't know, in light of Mr. Rennick's physical  
10 condition, if he's going to need something unusual. And,  
11 with your permission, what I would like to do is pass on,  
12 if you want me to, pass on the records from the veteran's,  
13 Departments of Veterans Affairs Medical Center to the  
14 marshals, who can give it to the Bureau of Prisons to make  
15 sure that he is assigned to a facility that can take care  
16 of any physical problems he might have as a result of his  
17 injuries.

18 MR. GALLAGHER: And my real hope is obviously a  
19 facility that has the capacity to deal with post traumatic  
20 stress disorder and continue treatment for that.

21 THE COURT: Okay.

22 MR. GALLAGHER: I did some research last week,  
23 and I could not find, unfortunately, whether or not there  
24 is anywhere closer than Missouri that has a unit. Missouri  
25 is the only unit that I'm aware of right now in the midwest

1       that has specifically psychiatrists or psychologists on  
2       staff who deal with posttraumatic stress disorder. That's  
3       not to say that psychologists at either Ashland or down in  
4       Kentucky don't have it. It just doesn't list that as one  
5       of it. Missouri is the only one that lists the capacity to  
6       deal with post traumatic stress disorder unit.

7                  THE COURT: All right. Let me determine what the  
8       priorities are. Is the first priority a facility that can  
9       deal with the PTSD, rather than a facility that is  
10      geographically the closest to Cincinnati?

11                 MR. GALLAGHER: That would be my hope for  
12       treatment for PTSD. If these proceedings were not here,  
13       the VA was prepared to have him try and go into an  
14       inpatient program. So I think that's the priority.

15                 THE COURT: And then I assume the second priority  
16       would be as close to Cincinnati as possible?

17                 MR. GALLAGHER: Geographically, yes, ma'am.

18                 THE COURT: I read in the report that Mr. Rennick  
19       was still getting some physical therapy as well. Do you  
20       want me to make a recommendation that that continue?

21                 Are you still getting the physical therapy,  
22       Mr. Rennick?

23                 THE DEFENDANT: Yes, ma'am.

24                 THE COURT: All right. I assume most places can  
25       do that.

1                   Mr. Gallagher, do you have any objections as to  
2 why the sentence should not be imposed as stated?

3                   MR. GALLAGHER: I have already lodged one about  
4 the downward departure. Other than that, no, ma'am.

5                   THE COURT: And, Mr. Brichler, do you have any  
6 objections?

7                   MR. BRICHLER: No, Your Honor.

8                   THE COURT: The sentence is thus imposed as  
9 stated.

10                  Let me tell you about your rights on appeal.  
11 Both parties are notified by the Court that you have a  
12 right to appeal this sentence. If you're indigent and  
13 cannot retain a lawyer, one will be appointed to represent  
14 you on appeal. You are further advised that, in accordance  
15 with the provisions of Rule 4(b) of the Rules of Appellate  
16 Procedure, you must file your notice of appeal with the  
17 clerk of the United States District Court, within ten days  
18 of the filing of the judgment. The Court does advise you  
19 that, if you request, the clerk of the Court will prepare  
20 and file immediately the notice of appeal on your behalf.

21                  It is further ordered that the defendant shall  
22 notify the United States Attorney for the Southern District  
23 of Ohio within 30 days of any change in resident or mailing  
24 address until all fines and special assessments imposed by  
25 this judgment are fully paid.

1           If you request, Mr. Rennick, I'll order the clerk  
2 of courts to file your notice of appeal immediately after  
3 the judgment is filed, and, if not, Mr. Gallagher, will you  
4 protect the rights of the defendant?

5           MR. GALLAGHER: Judge, I will. I have already  
6 spoken to Mr. Rennick about the potential outcomes of the  
7 sentencing hearing. He would like to appeal.

8           THE COURT: And are you going to be responsible  
9 for filing it, or do you want the clerk?

10          MR. GALLAGHER: Judge, if the clerk would. I  
11 don't know what the financial situation is going to be from  
12 this point forward because of forfeiture proceedings that  
13 are engaged in state court. But either new counsel is  
14 either going to be appointed or retained to pursue it.

15          THE COURT: All right. That's fine.

16          Mr. Brichler, what's the custodial status of the  
17 defendant?

18          MR. BRICHLER: Your Honor, Mr. Rennick is free on  
19 bond that was posted when this case was initially brought.  
20 I spoke with Pretrial Services, and he's complied with all  
21 the requested Pretrial Services, and we would request the  
22 Court consider allowing Mr. Rennick to self report.

23          THE COURT: All right. Who have we got from the  
24 marshals here? Did I see Joel somewhere?

25          Nobody here from the marshals. Okay. I'm not

1 quite sure.

2 Mr. Brichler, do you recall how long it's taking  
3 to get a designation for an institution these days?

4 MR. BRICHLER: About three weeks.

5 THE COURT: Mr. Rennick, I am going to allow you  
6 to self surrender to the Bureau of Prisons. During the  
7 interim period, until you're required to surrender to the  
8 Bureau of Prisons, I'm going to order you to abide by all  
9 the conditions and requirements of your current bond, and  
10 in particular I want to remind you that, under the  
11 conditions of your current bond, you are prohibited from  
12 committing another federal, state or local crime.

13 It's the judgment of the Court that you will be  
14 permitted to self surrender to the institution assigned by  
15 the Bureau of Prisons at a date designated by the Bureau of  
16 Prisons but no sooner than -- what you want, about three  
17 weeks? Might as well make it no sooner than three weeks.

18 MR. GALLAGHER: The 20th is Friday.

19 THE COURT: Of February?

20 MR. GALLAGHER: I was just -- that would be  
21 the -- three weeks from today would be the 18th of February  
22 if I'm calculating correctly.

23 THE COURT: Want to make it on a Monday?

24 MR. GALLAGHER: Okay.

25 THE COURT: Why don't we make it Monday, February

1 23?

2 Is there anything further to come before the  
3 Court at this time?

4 MR. BRICHLER: No, Your Honor.

5 MR. GALLAGHER: No, ma'am.

6 THE COURT: Thank you, everyone.

7 Good luck to you, Mr. Rennick.

8 PROCEEDINGS CONCLUDED AT 10:30 A.M.

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C E R T I F I C A T E

14 I, Betty J. Schwab, the undersigned, do  
15 hereby certify that the foregoing is a correct  
16 transcript from the record of the proceedings in  
17 the above-entitled matter.

18

19

Betty J. Schwab  
BETTY J. SCHWAB, RPR  
Official Reporter

21

22

23

24

25

1                   UNITED STATES DISTRICT COURT

2                   SOUTHERN DISTRICT OF OHIO

3                   WESTERN DIVISION

4                   UNITED STATES OF AMERICA, : CRIMINAL ACTION 1:02cr157  
5   :  
6                   Plaintiff,                 : Cincinnati, Ohio  
7   : Wednesday, January 28, 2004  
8                   - vs -                         :  
9                   WAYNE BABJAMIN,             : Sentencing Hearing  
10   :  
11                   Defendant.                 : 10:30 a.m.

12                   TRANSCRIPT OF PROCEEDINGS  
13                   BEFORE THE HONORABLE SUSAN J. DLOTT, JUDGE

14                   For the Plaintiff: Robert C. Brichler, Esq.  
15   Asst. U.S. Attorney  
16   Atrium II, Suite 400  
17   221 East Fourth Street  
18   Cincinnati, Ohio 45202

19                   For the Defendant: Gregory A. Cohen, Esq.  
20   The Citadel  
21   114 East 8th Street  
22   Cincinnati, Ohio 45202

23                   Courtroom Deputy: Vicki Penley  
24                   Court Reporter: Betty Schwab

1 PROCEEDINGS

2 THE COURT: Mr. Cohen, good morning. I  
3 appreciate -- I understand from Mr. Gallagher that you were  
4 covering for Mr Haas, and I think that's very nice of you  
5 to have done that.

6 (Off the record.)

7 THE COURT: Okay. We are doing Mr. Elliot?

8 MR. BRICHLER: Benjamin.

9 THE COURT: All right. Will counsel please enter  
10 their appearances for the record?

11 MR. BRICHLER: Robert Brichler for the United  
12 States.

13 MR. COHEN: Gregory Cohen on behalf of  
14 Mr. Benjamin.

15 THE COURT: And are you Wayne Benjamin?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Are you represented in this  
18 proceeding by Gregory Cohen, an attorney who is present  
19 here in court with you today?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: On a former day, the defendant  
22 pleaded guilty to possession with intent to distribute  
23 marijuana. At that time, the matter was referred to the  
24 United States Probation Department for presentence  
25 investigation and report. The Court has received the

1 presentence report prepared October 30, 2003.

2 Let me ask counsel, Mr. Brichler, have you  
3 received a copy of the presentence report?

4 MR. BRICHLER: Yes, Your Honor.

5 THE COURT: And, Mr. Cohen, have you received a  
6 copy of the presentence report?

7 MR. COHEN: I have, Your Honor.

8 THE COURT: Mr. Benjamin, have you received a  
9 copy of the presentence report?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Have you had an opportunity to  
12 discuss it with Mr. Cohen?

13 THE DEFENDANT: Yes.

14 THE COURT: Then I would now like to address the  
15 factual findings for sentencing. The Court will accept the  
16 presentence report as part of the sentencing facts in this  
17 case and will proceed to address any additional sentencing  
18 facts the parties wish to present.

19 Let me ask counsel, are any of the facts reported  
20 in the presentence report disputed by the defendant or the  
21 government, Mr. Brichler?

22 MR. BRICHLER: No, Your Honor, no disputes.

23 THE COURT: Mr. Cohen?

24 MR. COHEN: Your Honor, based on the nature of  
25 the plea, there will be no disputes.

1                   THE COURT: Mr. Cohen, any additional sentencing  
2 facts you wish to present?

3                   MR. COHEN: Judge, just to make the Court aware,  
4 obviously the Court has reviewed the presentence  
5 investigation report. Mr. Benjamin was not given two  
6 points acceptance of responsibility because of the  
7 confusing nature of how this process took place, and the  
8 day of trial we entered into a plea on an information,  
9 established, as all sides acknowledge, a fictitious date as  
10 we do in the law sometimes to facilitate a plea. So my  
11 client could not very well give information regarding a  
12 date certain, which is what the plea indicated.

13                  But, in any event, he understands that he was in  
14 a position, close relationship with Mr. Rennick, exposed to  
15 what was going on and certainly ready today to go forward  
16 with the plea as originally agreed to, Judge.

17                  I just wanted to make the Court aware it was not  
18 certainly a sense of defiance on Mr. Benjamin's part. His,  
19 unlike some other individuals involved in a conspiracy,  
20 contact with the system is fairly limited.

21                  THE COURT: I appreciate that, Mr. Cohen.

22                  And, Mr. Benjamin, I want you to know that I  
23 certainly never hold against anyone their right to exercise  
24 their constitutional rights. If you want to go to trial,  
25 that's fine with the Court. That's your right under the

1 Constitution, and I'm here to enforce it.

2 Mr. Brichler, anything you want to say in that  
3 regard?

4 MR. BRICHLER: No. No sentencing facts, Your  
5 Honor.

6 THE COURT: All right. Then there being no  
7 objections to the factual statements contained in the  
8 presentence report, the Court adopts those statements as  
9 its finding of fact. The defendant has entered a valid  
10 plea to count one of the superseding information.

11 Accordingly, the defendant is adjudged guilty of case  
12 number 1:02cr157(7)SJD, which is distribution of marijuana.

13 Pursuant to 18 United States Code Section 3553,  
14 the Court makes the following findings of relevant fact  
15 significant to the imposition of sentence. The defendant  
16 is guilty of violating 21 United States Code Section  
17 841(a)(1) and (b)(1)(D), which is a Class D felony and  
18 subjects the defendant to a maximum of five years  
19 imprisonment, a \$250,000 fine, a period of supervised  
20 release of at least two years, and a \$100 special  
21 assessment. However, the Sentencing Guidelines Manual  
22 controls the determination of sentence in this case.

23 Next, I'll deal briefly with the issue of  
24 objections. Because the final presentence report indicates  
25 there are no remaining objections to the presentence

1 report, let me ask counsel: Are there any objections to  
2 the presentence report that have not been previously  
3 raised?

4 MR. BRICHLER: No, Your Honor.

5 MR. COHEN: No Your Honor.

6 THE COURT: Then the Court notes there are no  
7 objections from either the defendant or the government as  
8 to the application of the Guidelines or the facts contained  
9 in the presentence report.

10 Let me go over with you then what the applicable  
11 Guidelines are. The defendant plead guilty to count one of  
12 a superseding information charging him with distribution of  
13 marijuana in violation of Title 21 United States Code  
14 Section 841(a)(1) and (b)(1)(D). In accordance with the  
15 provision of 28 USC Section 3553, the Court places on the  
16 record the following statement of reasons.

17 The guideline for the offense of distribution of  
18 marijuana is found at Sentencing Guideline Section  
19 2D1.1(c)(16). According to that section, the defendant's  
20 base offense level is 8. As the defendant has not accepted  
21 responsibility for his offense conduct, he is not eligible  
22 for a reduction of his offense level pursuant to 3E1.1.  
23 The total offense level is therefore 8.

24 The Court finds the defendant's criminal history  
25 category places him in category I. Based on a total

1 offense level of 8 and a criminal history category of I,  
2 the Guideline imprisonment range is 0 to 6 months. The  
3 Guideline term for a period of supervised release is two to  
4 three years.

5 Pursuant to the Sentencing Guidelines, the  
6 sentence of probation is authorized because the applicable  
7 Guideline range is in Zone A of the sentencing table.

8 The Guideline range for a fine is from \$1,000 to  
9 \$10,000, and there is a \$100 special assessment which is  
10 mandatory.

11 Let me ask counsel: Do you have any questions  
12 about the statutory or Guideline provisions applicable to  
13 the imposition of punishment in this case?

14 MR. COHEN: Your Honor, it appears appropriate  
15 based on the Guidelines.

16 MR. BRICHLER: No, Your Honor.

17 THE COURT: Then we will now proceed to the  
18 sentencing. And at this time the Court will entertain  
19 anything the parties wish to say in mitigation or  
20 aggravation of sentence.

21 Mr. Benjamin, or -- I'm sorry -- let me start  
22 with Mr. Cohen. I apologize, Mr. Cohen.

23 MR. COHEN: Judge, Mr. Benjamin essentially ended  
24 up in this situation out of a love for automobiles.

25 Mr. Rennick and his son were trying very hard to get into

1 the racing business. Mr. Benjamin is a very skilled  
2 bodyman in terms of trying to put these automobiles  
3 together and actually wanting to get into racing, and that  
4 kind of led him into the gray area which places him before  
5 this Court today.

6 He currently resides with his grandmother. The  
7 family, by agreement, has placed him in the position of  
8 responsibility for his grandmother. He is the caregiver  
9 and receives a check for \$1,000 a month, which covers his  
10 outside expenses. And then he does have full-time  
11 obligations there.

12 He would, at some point, like to get back into  
13 the field of auto racing, because I think that is his one  
14 true passion.

15 His record prior to this is fairly old. When he  
16 was very young, he got into some trouble but managed to  
17 stay out of the purview of the criminal justice system  
18 since then.

19 I have met with him on a number of occasions. I  
20 know this is a very difficult situation for him, as most  
21 appearances in federal court are when you stand at this  
22 position. But he struggles, not just with this case, but  
23 with the constant chronic back problems resulting from  
24 injury which, you could say, reduced his quality of life,  
25 and he needs to find a way to deal with that, cope with

1 that, and get on with his life.

2 I ask the Court to adopt the recommendations of  
3 the United States Probation Department and impose minimum  
4 sanctions in this instance and allow him to perform and  
5 commit whatever responsibilities go along with this Court's  
6 order and show that he has redeeming qualities. He is in a  
7 position where he can return to a normal life without  
8 having to come back before this Court for sanctions.

9 THE COURT: Thank you, Mr. Cohen.

10 Mr. Benjamin, anything you wish to say, sir?

11 THE DEFENDANT: Not really, ma'am.

12 THE COURT: Mr. Brichler, anything you wish to  
13 say?

14 MR. BRICHLER: No, Your Honor.

15 THE COURT: All right. Then it's the duty of the  
16 Court to sentence the defendant at this time. However,  
17 counsel will have a final chance to make legal objections  
18 before the sentence is actually imposed.

19 Pursuant to the Sentencing Reform Act of 1984,  
20 it's the judgment of the Court that the defendant be placed  
21 on probation for a period of three years. As a condition  
22 of probation, the defendant shall pay any unpaid monetary  
23 penalties. The defendant shall not commit another federal,  
24 state or local crime and is prohibited from possessing a  
25 firearm or other dangerous device.

1                 The defendant shall not possess any illegal  
2 controlled substances. In addition, the defendant shall  
3 comply with the standard conditions of probation as adopted  
4 by the Court for the Southern District of Ohio.

5                 As a special condition of probation, the  
6 defendant is ordered to refrain from any unlawful use of a  
7 controlled substance and to submit to one drug test within  
8 15 days of release and at least two periodic drug tests  
9 thereafter. The Court orders a fine in the amount of  
10 \$1,000 be imposed. The fine is due immediately. No  
11 interest shall accrue on any unpaid balance.

12                 The defendant shall not obtain prescription  
13 medication without the approval of a licensed physician  
14 with whom he has had personal contact and by whom he has  
15 been physically examined.

16                 A special assessment of \$100 is owed and due  
17 immediately.

18                 Mr. Cohen, do you have any objections as to why  
19 the sentence should not be imposed as stated?

20                 MR. COHEN: Judge, only the fact of my client's  
21 financial status. I don't believe he can pay a \$1,000 fine  
22 immediately.

23                 THE COURT: And he doesn't have to pay it  
24 immediately. He can work out a payment plan with the  
25 probation department. I know that language, as we say it,

1 is sort of misleading. It would be during the term of  
2 probation.

3 MR. COHEN: Judge, I don't know if the Court has  
4 any authority to reduce that fine, just again based on his  
5 financial status. He has requested that I petition the  
6 Court.

7 It seems, I know, it's a fairly low fine from  
8 where I stand, but he's in a much different financial  
9 position.

10 THE COURT: In order for the Court to reduce the  
11 fine -- because what I have done is given him the lowest  
12 fine under the Sentencing Guidelines.

13 MR. COHEN: I understand that.

14 THE COURT: In order to reduce that, the Court  
15 would have to make a finding that Mr. Benjamin was not  
16 capable of paying a fine within that range. And from all  
17 that I read regarding his employment abilities and  
18 everything, I simply can't make that finding.

19 MR. COHEN: I understand, Judge. I'll explain it  
20 to him.

21 THE COURT: Mr. Brichler, do you have any  
22 objections as to why the sentence should not be imposed as  
23 stated?

24 MR. BRICHLER: No, Your Honor.

25 THE COURT: All right. Then the sentence is thus

1 imposed as stated.

2 Let me tell you about your rights on appeal.

3 Both parties are notified by this Court that you have a  
4 right to appeal this sentence. If you're indigent and  
5 cannot afford to retain a lawyer, one will be appointed to  
6 represent you on your appeal.

7 You're further advised that, in accordance with  
8 the provisions of Rule 4(b) of the Rules of Appellate  
9 Procedure, you must file your notice of appeal with the  
10 clerk of the United States District Court within ten days  
11 of the filing of this judgment.

12 The Court does hereby advise you, if you so  
13 request, the clerk of the court will prepare and file  
14 immediately a notice of appeal on your behalf.

15 It is further ordered that the defendant shall  
16 notify the United States Attorney for the Southern District  
17 of Ohio within 30 days of any change in resident or mailing  
18 address until any fines and special assessments imposed by  
19 this judgment are fully paid.

20 If you request, Mr. Benjamin, I will order the  
21 clerk of courts to file your notice of appeal immediately  
22 after the judgment is filed.

23 And if not, Mr. Cohen, will you protect the  
24 rights of the defendant?

25 MR. COHEN: Judge, I will protect his rights.

1                   THE COURT: All right. Is there anything further  
2 to come before the Court at this time?

3                   MR. COHEN: Nothing from the defense, Your Honor.

4                   MR. BRICHLER: No, Your Honor.

5                   THE COURT: Okay. Good luck to you,  
6 Mr. Benjamin. I hope to never see you back in here for  
7 this reason again.

8                   PROCEEDINGS CONCLUDED

9

10                  C E R T I F I C A T E

11                  I, Betty J. Schwab, the undersigned, do  
12 hereby certify that the foregoing is a correct  
13 transcript from the record of the proceedings in  
14 the above-entitled matter.

15

16

Betty J. Schwab  
BETTY J. SCHWAB, RPR  
Official Reporter

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1                   UNITED STATES DISTRICT COURT

2                   SOUTHERN DISTRICT OF OHIO

3                   WESTERN DIVISION

4                   UNITED STATES OF AMERICA, : CRIMINAL ACTION 1:02cr157  
5   :  
6                   Plaintiff,                 : Cincinnati, Ohio  
7   : Wednesday, January 28, 2004  
8                   -vs-                         :  
9                   MATTHEW ELLIOT,             :  
10   : Sentencing Hearing  
11                   Defendant.                 :  
12   : 10:50 a.m.  
13   :- - -

14   TRANSCRIPT OF PROCEEDINGS  
15   BEFORE THE HONORABLE SUSAN J. DLOTT, JUDGE  
16   :- - -

17                   For the Plaintiff: Robert C. Brichler, Esq.  
18   Asst. U.S. Attorney  
19   Atrium II, Suite 400  
20   221 East Fourth Street  
21   Cincinnati, Ohio 45202  
22                   For the Defendants: Kenneth L. Lawson, Esq.  
23   Kenneth L. Lawson & Associates  
24   The Dominion Building  
25   808 Elm Street, Suite 100  
   Cincinnati, Ohio 45202

Courtroom Deputy: Vicki Penley  
Court Reporter: Betty Schwab

1 PROCEEDINGS

2 THE COURTROOM DEPUTY: The next case is United  
3 States of America versus Matthew Elliot, 1:02cr157,  
4 defendant number five.

5 Will the defendant and counsel please step to the  
6 podium.

7 MR. LAWSON: Good morning, Judge Dlott.

8 THE COURT: Good morning, Mr. Lawson. I didn't  
9 know if we were going to see you today or Ms. Love or both  
10 of you.

11 MR. LAWSON: You have the pleasure of seeing both  
12 of us.

13 THE COURT: Is Ms. Love here?

14 MR. LAWSON: She's hiding in the back.

15 THE COURT: Would she like to come up?

16 MR. LAWSON: Not for this one, Judge.

17 (Off the record.)

18 THE COURT: All right. Will counsel please enter  
19 their appearances for the record?

20 MR. BRICHLER: Robert Brichler for the United  
21 States.

22 MR. LAWSON: Kenneth Lawson on behalf of  
23 Mr. Elliot.

24 THE COURT: And are you Matthew Alton Elliot?

25 THE DEFENDANT: Yes, ma'am.

1                   THE COURT: And are you represented in this  
2 proceeding by Kenneth Lawson, an attorney who is present  
3 here in court with you today?

4                   THE DEFENDANT: Yes, ma'am.

5                   THE COURT: On a former day, the defendant  
6 pleaded guilty to possession with intent to distribute  
7 marijuana. At that time, the matter was referred to the  
8 United States Probation Department for a presentence  
9 investigation and report. The Court has received the  
10 presentence report prepared November 7, 2003.

11                  Let me ask you, Mr. Brichler, have you received a  
12 copy of the presentence report?

13                  MR. BRICHLER: Yes, Your Honor.

14                  THE COURT: And, Mr. Lawson, have you received a  
15 copy of the presentence report?

16                  MR. LAWSON: I have, Your Honor.

17                  THE COURT: And finally, Mr. Elliot, have you  
18 received a copy of the presentence report?

19                  THE DEFENDANT: Yes, ma'am.

20                  THE COURT: Have you had an opportunity to  
21 discuss it with Mr. Lawson?

22                  THE DEFENDANT: Yes, ma'am.

23                  THE COURT: Then I would now like to address the  
24 factual findings for sentencing. The Court will accept the  
25 presentence report as part of the sentencing facts in this

1 case and will proceed to address any additional sentencing  
2 facts the parties wish to present.

3 Let me ask counsel: Are any of the facts  
4 reported in the presentence report disputed by the  
5 government or the defendant? Mr. Brichler?

6 MR. BRICHLER: Not by the government, Your Honor.

7 THE COURT: Mr. Lawson?

8 MR. LAWSON: There are a couple of issues, Judge,  
9 that came to light this morning that may, with respect to  
10 the plea agreement, may be in dispute.

11 THE COURT: Okay. Are they facts that are in the  
12 presentence report?

13 MR. LAWSON: No. I don't think they're contained  
14 in the presentence report, Judge.

15 THE COURT: All right. I don't want to foreclose  
16 your opportunity to raise it at the appropriate time.

17 MR. LAWSON: Okay.

18 THE COURT: You want to give me some idea what it  
19 is?

20 MR. LAWSON: Judge, this was a -- if you recall  
21 when he entered the pleas, it was a date the morning of the  
22 trial on a case that had been ongoing for sometime and  
23 where my client and especially Mr. Gallagher's client were  
24 adamant about going to trial. In order to end up into  
25 these plea bargains, it was presented to my client, since

1       he was closest to Mr. Rennick, that if he was able to get  
2       Mr. Rennick to enter a plea, voluntarily enter a plea and  
3       also provide sub -- and get Mr. Rennick to provide  
4       substantial assistance, he would receive, he being  
5       Mr. Elliot, would receive a 5K1. So Mr. Elliot's plea  
6       bargain and 5K1 is based on what Mr. Rennick was to do.

7                   Mr. Elliot did that. When Mr. Elliot was shot --  
8       not Mr. Elliot. When Mr. Rennick was shot, I sent  
9       Mr. Brichler a letter on November 10th -- because my client  
10      had been concerned that he was next and, in fact, had also  
11      expressed concerns a week before that people were  
12      threatening his life -- reminding him of what this was  
13      about and asking if there was anything that they knew or  
14      could do to help protect him along with Mr. Rennick.

15                  That was sent down November 10th. But it  
16      reiterates what our understanding of his responsibility was  
17      to do, which was to get in discussions with his friend to  
18      enter the plea and to also provide substantial assistance.

19                  When I spoke to Mr. Brichler earlier this  
20      morning, I believe his understanding is that we were given  
21      the opportunity to enter a plea to the count that we plead  
22      to if we were able to get Mr. Rennick to plead. But I  
23      don't believe that either one are disputing that the issue  
24      also came up that, if he was able to get Mr. Rennick to  
25      provide substantial assistance, I believe the government's

1 position is that Mr. Rennick has not provided substantial  
2 assistance.

3 Now, when I came in this morning, I hear that  
4 there are tapes, et cetera. I know that Mr. Gallagher  
5 denied to have a hearing on whether or not this  
6 constitutes -- Rennick's actions constitute substantial  
7 assistance, but, on behalf of my client, I would like to  
8 have that hearing, because my understanding of cooperation,  
9 the ultimate goal is to see if we can get an individual  
10 who's out committing crimes charged with a good crime and  
11 also to see if that individual, after he's charged, can  
12 lead to higher-ups. I don't know of any charge more  
13 serious, other than murder and attempted murder. And if  
14 Mr. Rennick was shot at the by the target who attempted to  
15 kill him, then, although the crime wasn't a drug-related  
16 crime, it's a lot more serious than a drug-related crime  
17 and because he was doing it at the direction of the  
18 government. And they now know who did this. And this guy  
19 was a target, and he shoots Mr. Rennick.

20 I would think that, sooner or later when he's  
21 arrested and charged with attempted murder, especially if  
22 he knew or believed Mr. Rennick was somehow, formally or  
23 informally, a government agent, even more charges can be  
24 brought against him that would lead to the same type of  
25 cooperation that they normally get if the person had sold

1 the drugs, got charged and then was given the opportunity  
2 to cooperate to lead to a higher up.

3 I dispute the fact that -- not only that, but I  
4 also heard Mr. Rennick saying some things about promises  
5 that was made to, him, et cetera. I don't represent  
6 Mr. Rennick, but I do represent Mr. Elliot. I sense his  
7 plea bargain was so closely related to what Mr. Rennick  
8 did, I cannot pass on the opportunity to -- at least  
9 Mr. Gallagher has offered me the ability to come down and  
10 listen to the tapes at his office.

11 But my understanding, Judge, is that Mr. Rennick  
12 was out there doing what he said he was doing, at least  
13 that's what he said this morning. And he said also that he  
14 had taped these conversations. But, more importantly,  
15 Judge, I know that, if an officer got shot in the line of  
16 duty, not only would they receive a commendation for the  
17 work that they were doing at the time, they would receive  
18 high accolades. This man gets shot and can't get a 5K1. I  
19 did not know that he was not going to receive a 5K1 until I  
20 walked in here this morning, nor did I know there were any  
21 tapes that would lead to the justification for it.

22 So I don't mean to cause the Court any problems,  
23 but I have to represent Mr. Elliot to the best of my  
24 ability, Your Honor, and I would like it to run smoothly.  
25 But I just can't, as his counsel, sit here and say that I

1 have to explore that area, but I don't know what's on the  
2 tapes, and I don't know exactly -- if Mr. Gallagher would  
3 give me permission to talk to his client to see -- I would  
4 like to have a hearing on that in the very near future to  
5 determine if there was substantial assistance given that my  
6 client should get credit for. Because, but for his  
7 efforts, none of this would have went on, and I think the  
8 government knows this. And that was the basis of his  
9 entering the plea.

10 THE COURT: All right. I'll hear from  
11 Mr. Brichler, but let me tell you first, Mr. Lawson, that,  
12 as I think I mentioned to prior counsel, you know,  
13 whenever, you're certainly not troubling the Court when you  
14 bring up an issue like this. In fact, you have an ethical  
15 duty to raise every defense possible.

16 As you know, after I was an assistant United  
17 States attorney, I was a criminal defense attorney. So I  
18 appreciate, you know, the obligations that you have, and  
19 the Court is never inconvenienced by that.

20 MR. LAWSON: Thank you, Judge.

21 THE COURT: Mr. Brichler, you want to respond?

22 MR. BRICHLER: Your Honor, I really -- I'm at a  
23 loss to understand how Mr. Rennick's activities have  
24 anything to do with this defendant.

25 MR. LAWSON: I just wanted to make sure

1       Mr. Gallagher is still present, Your Honor.

2                  THE COURT: Do you want -- do you need to listen  
3                  to the tapes first before you have Mr. Mercado's testimony?

4                  MR. LAWSON: I would like, if he would give me  
5                  permission, to talk to his client, because apparently there  
6                  is --

7                  THE COURT: Mr. Gallagher's client?

8                  MR. LAWSON: Yes. Because apparently there is  
9                  some conversations that are not on tape, but there was a  
10                 lot of conversations on ongoing things that were going on.

11                 I would submit to the Court this correspondence  
12                 that I sent to Mr. Brichler on November 10th in response to  
13                 his saying he's at a loss as to what I'm saying.

14                 THE COURT: Mr. Lawson, that stationery is  
15                 remarkable. You've got to let me know where you get this  
16                 done so I can put Cavaliers on mine.

17                 Mr. Brichler, have you had an opportunity --

18                 MR. BRICHLER: I have read the letter. I have  
19                 read it previously. And, first of all, I'm not privy to  
20                 whether or not Mr. Elliot was the one that convinced  
21                 Mr. Rennick to enter a plea. I'm not privy to the fact  
22                 that it's alleged that Mr. Elliot talked Mr. Rennick into  
23                 cooperating. I have no way of knowing that.

24                 As far as the concern about Mr. Elliot's safety,  
25                 when I received the letter, I had spoken to Mr. Mercado,

1 and it was my understanding that Mr. Elliot had nothing to  
2 do with any of the things that were going on and wasn't  
3 involved and wasn't in any danger. So I was a little  
4 bit -- when I received the letter, I kind of -- I wondered  
5 where it was coming from, because of the fact that  
6 Mr. Elliot didn't have anything to do with this, and I  
7 didn't know why Mr. Lawson felt that he was in danger.

8 MR. LAWSON: Judge, if I may, every defense  
9 attorney that was present for trial that morning, everybody  
10 was here ready to go to trial. And Mr. Gallagher knows,  
11 and I don't know if Mr. Cohen remembers it or not, that  
12 that was the offer that was made to my client, because we  
13 had to come back out and let my client speak to  
14 Mr. Gallagher's client.

15 THE COURT: All right. Here's what --

16 MR. BRICHLER: May I have a moment, Your Honor,  
17 with Mr. Lawson?

18 THE COURT: Sure.

19 (Off-the-record discussion between Mr. Brichler  
20 and Mr. Lawson.)

21 MR. LAWSON: Judge --

22 MR. BRICHLER: Your Honor, I just had a  
23 discussion with Mr. Lawson, and he related to me that, on  
24 the morning of the pleas, that I had a conversation with  
25 him concerning his client's ability to basically make the

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11

1 case go away.

2 THE COURT: You mean make the trial go away?

3 MR. BRICHLER: Make the trial go away. If he was  
4 cooperative and if he was able to convince the other  
5 defendants that this is what they should do.

6 MR. LAWSON: Actually, it was Mr. Rennick, not  
7 the other defendants.

8 MR. BRICHLER: Okay. And Mr. Lawson indicated  
9 that I told him that, if that happened, that I would  
10 consider Mr. Elliot's conduct to be substantial assistance.

11 Now, I don't have any recollection of that. On  
12 the other hand, I have practiced law for many years with  
13 Mr. Lawson, and I know that Mr. Lawson would not say  
14 something about me if it hadn't occurred. So I'm prepared  
15 at this time, based upon Mr. Lawson's representations, to  
16 request the Court to consider a downward departure on the  
17 basis of his assistance in that case.

18 I know it's obviously out of time --

19 THE COURT: No, no. That's all right.

20 MR. BRICHLER: And his range was 21 to 27 months.

21 THE COURT: Right. He's a category II.

22 MR. BRICHLER: Category II, level 15.

23 THE COURT: Right.

24 MR. BRICHLER: A one-third reduction would be 14  
25 months; 7 from 21 would be 14 months. I would request the

1 Court consider a sentence, therefore, within the range of  
2 offense level 12, which would be 12 to 18 months where 14  
3 months would be.

4 MR. LAWSON: I have discussed that with my  
5 client, Your Honor, and there is no objection. I discussed  
6 that with him already. And I appreciate what Mr. Brichler  
7 just stated, but Mr. Gallagher is also in the room. We  
8 talked briefly before we came up here, and I just want  
9 Mr. Brichler to know that that is our recollection about  
10 what happened that day.

11 MR. BRICHLER: And I want to make it clear that  
12 this motion for reduction is based upon what happened that  
13 day and it's not based upon any conduct that Mr. Rennick  
14 subsequently engaged in.

15 THE COURT: All right.

16 MR. LAWSON: It still gets us to where we were  
17 at, Judge. There is no objection to that either.

18 THE COURT: So you don't want a hearing.

19 THE DEFENDANT: We're ready to go forward with  
20 sentencing, Your Honor.

21 THE COURT: All right. I guess we were talking  
22 about -- I'm not sure if the last question was were any of  
23 the facts reported in the presentence report disputed by  
24 the defendant or the government, or do you have any  
25 additional sentencing facts? And I guess those were some

1 additional sentencing facts.

2 MR. LAWSON: Other than that, Judge, no.

3 THE COURT: All right. Mr. Brichler?

4 MR. BRICHLER: No, Your Honor.

5 THE COURT: There being no objections to the  
6 factual statements contained in the presentence report,  
7 other than the discussion that was just had here in the  
8 courtroom, the Court adopts those statements as its finding  
9 of fact. The defendant has entered a valid plea to count  
10 one of the indictment. Accordingly, the defendant is  
11 adjudged guilty of case number 1:02cr157(5)SJD, possession  
12 with intent to distribute marijuana.

13 Pursuant to 18 United States Code Section 3553,  
14 the Court makes the following findings of relevant fact  
15 significant to the imposition of sentence. The defendant  
16 is guilty of violating 21 United States Code Section  
17 841(a)(1) and (b)(1)(D), which is a Class D felony and  
18 subjects the defendant to a maximum of five years  
19 imprisonment, a \$250,000 fine, a period of supervised  
20 release of at least two years and a \$100 special  
21 assessment. However, the Sentencing Guideline Manual  
22 controls the determination of the sentence in this case.

23 The final presentence report indicates there are  
24 no remaining objections to the presentence report. Are  
25 there any objections to the presentence report that have

1 not been previously raised, other than what we have already  
2 discussed?

3 MR. LAWSON: No, Your Honor.

4 THE COURT: Okay. Mr. Brichler?

5 MR. BRICHLER: No, Your Honor.

6 THE COURT: The Court notes then that there are  
7 no objections from either the defendant or the government  
8 as to the application of the Guidelines or the facts  
9 contained in the presentence report other than our previous  
10 discussion.

11 The Court will now go over the applicable  
12 Guidelines. The defendant pled guilty to count one of an  
13 indictment charging him with possession with intent to  
14 distribute marijuana in violation of Title 21 United States  
15 Code Section 841(a)(1) and (b)(1)(D).

16 In accordance with the provisions of 18 USC  
17 Section 3553, the Court places on the record the following  
18 statement of reasons. The Guideline for the offense of  
19 possession with intent to distribute marijuana is found at  
20 Sentencing Guideline Section 2F1.1(a). According to that  
21 section, the defendant's base offense level is 18. In  
22 accordance with 3E1.1(a) and (b), the offense level is  
23 reduced by three points based upon the defendant's  
24 acceptance of responsibility.

25 Pursuant to the Antiterrorism and Effective Death

1 Penalty Act, restitution is mandatory; however, there was  
2 no documented loss in this case. In a case where there is  
3 no identifiable victim and the defendant has been convicted  
4 under 21 United States Code Section 841, the Court taking  
5 into consideration the amount of public harm caused by the  
6 offense and any other relevant factors, shall order an  
7 amount of community restitution not to exceed the fine  
8 imposed under section 5El.2 and 5El.1(d).

9 Since this is the defendant's second conviction  
10 for an offense involving the distribution of a controlled  
11 substance, the denial of federal benefits is up to ten  
12 years in accordance with 21 USC Section 862(a)(1)(B),  
13 although let me make clear that I'm not denying federal  
14 benefits in this case.

15 The total offense level is therefore 15. And the  
16 Court find the defendant's criminal history category is  
17 category II. Based on a total offense level of 15 and a  
18 criminal history category of II, the Guideline imprisonment  
19 range is 15 to 21 months. The Guideline term for a period  
20 of supervised release is two to three years. The  
21 Guidelines do not authorize a sentence of probation where  
22 the minimum term of imprisonment specified is 8 months or  
23 more. The Guideline range for a fine is from \$4,000 to  
24 \$40,000, and there is a \$100 special assessment which is  
25 mandatory.

1 Now I need to find my trusty Sentencing  
2 Guideline. What I'm looking for, counsel, is if the Court  
3 grants the 5K1.1, that just changes the fine amount. I'm  
4 just trying to figure out what that is. I don't think I  
5 have it.

6 MR. BRICHLER: It's \$3,000 to \$30,000 if you  
7 departed to level 12.

8 THE COURT: Great. Thank you.

9 MR. BRICHLER: Thank the probation officer for  
10 that.

11 THE COURT: Thank you, Mr. Barbeau.

12 Okay. There has been a motion for departure  
13 based on substantial assistance under 5K1.1. There has  
14 already been some discussion on the record about that.

15 Do counsel want to discuss anything further, and,  
16 if so, do you want to do it at sidebar?

17 MR. LAWSON: No, Your Honor.

18 MR. BRICHLER: No, Your Honor.

19 THE COURT: All right. Then the Court will grant  
20 the government's motion for substantial assistance based on  
21 5.1, and we can now proceed to sentencing.

22 At this time, the Court will entertain anything  
23 the parties wish to say in mitigation or aggravation of  
24 sentence. Mr. Lawson?

25 MR. LAWSON: Judge, I would just ask the Court to

1 follow the tone of the probation department's  
2 recommendation when -- when I say that, it appears they  
3 were willing to give him the low level of the offense level  
4 with 21 months when the range was 21 to 27. I'm asking the  
5 Court to understand that, based on some of the confusion  
6 however, Mr. Elliot always thought he would at least get  
7 the 5K1. I would ask the Court to continue to follow the  
8 logic of the probation department and follow that to the  
9 extent where the Court would impose the 14 months as  
10 opposed to anything higher. And I just -- I believe that's  
11 fair. I believe that is still consistent with the report.  
12 Because the report went as low as it could under those  
13 Guidelines without considering substantial assistance. Now  
14 we have the substantial assistance, and I think that going  
15 to 14, which is the low level underneath the new area based  
16 upon the 5K1, is still consistent with the report.

17 THE COURT: I have to check something here.

18 Mr. Elliot, anything you wish to say, sir?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Mr. Brichler, anything you wish to  
21 say?

22 MR. BRICHLER: No, Your Honor.

23 THE COURT: All right. Then it's the duty of the  
24 Court to sentence the defendant at this time; however,  
25 counsel will have a final chance to make legal objections

1 before the sentence is actually imposed.

2 Pursuant to the Sentencing Reform Act of 1984,  
3 it's the judgment of the Court that the defendant be hereby  
4 committed to the custody of the Bureau of Prisons for a  
5 term of 14 months on count one. The defendant shall  
6 participate in the Bureau of Prisons Inmate Financial  
7 Responsibility Program.

8 Following the sentence of imprisonment, the  
9 defendant is ordered to be placed on supervised release for  
10 a period of two years. Upon release from incarceration,  
11 the defendant is ordered to report in person to the  
12 probation office to the district in which he is released  
13 within 72 hours. As a condition of supervised release, the  
14 defendant shall pay any unpaid balance of his fine. The  
15 defendant shall not commit another federal, state or local  
16 crime and is prohibited from possessing a firearm or other  
17 dangerous device. The defendant shall not possess any  
18 illegal controlled substances.

19 In addition, the defendant shall comply with the  
20 standard conditions of supervised release as adopted by the  
21 Court for the Southern District of Ohio.

22 As a special condition of supervised release, the  
23 defendant is ordered to refrain from any unlawful use of a  
24 controlled substance and to submit to one drug test within  
25 15 days of release and at least two periodic drug tests

1 thereafter.

2                 The Court finds the defendant is capable of  
3 paying a fine in an amount below the minimum specified by  
4 the Guidelines. Accordingly, the Court orders that a fine  
5 in the amount of \$1,000 be imposed. The fine is due  
6 immediately, and, again, as I mentioned at the previous  
7 sentence, that a payment schedule can be worked out with  
8 the probation department for that. No interest shall  
9 accrue on any unpaid balance.

10               The defendant shall participate in a program  
11 approved by the United States Probation Office for  
12 substance abuse, which program may include testing to  
13 determine whether the defendant has reverted to the use of  
14 drugs or alcohol.

15               The defendant shall remain eligible for all  
16 federal benefits.

17               A special assessment of \$100 is owed and due  
18 immediately.

19               Mr. Elliot, do you want me to make a  
20 recommendation as to which facility you be sent to?  
21 Usually it's geographical, like the closest to Cincinnati.

22               MR. LAWSON: The closest, Your Honor.

23               THE COURT: Okay. Mr. Lawson, do you have any  
24 objections as to why the sentence should not be imposed as  
25 stated?

1                   MR. LAWSON: No, Your Honor.

2                   THE COURT: Mr. Brichler, do you have any  
3 objections?

4                   MR. BRICHLER: No, Your Honor.

5                   THE COURT: The sentence is thus imposed as  
6 stated.

7                   Let me tell you about your rights on appeal.  
8 Both parties are notified by the Court that you have a  
9 right to appeal the sentence. If you're indigent and  
10 cannot retain a lawyer, you may apply and one will be  
11 appointed to represent you on your appeal. You're further  
12 advised that, in accordance with the provisions of Rule  
13 4(b) of the Rules of Appellate Procedure, you must file  
14 your notice of appeal with the clerk of the United States  
15 District Court within 10 days of the filing of this  
16 judgment.

17                  The Court does hereby advise you that, if you so  
18 request, the clerk will prepare and file immediately a  
19 notice of appeal on your behalf.

20                  And it is further ordered that the defendant  
21 shall notify the United States Attorney for the Southern  
22 District of Ohio within 30 days of any change in resident  
23 or mailing address until all fines and special assessments  
24 imposed by this judgment are fully paid.

25                  If you request, Mr. Elliot, I'll order the clerk

1 of courts to file your notice of appeal immediately after  
2 the judgment is filed. And if not, Mr. Lawson, will you  
3 protect the rights of the defendant?

4 MR. LAWSON: I will do so, Your Honor.

5 THE COURT: All right. Mr. Brichler, what's the  
6 custodial status of the defendant?

7 MR. BRICHLER: Mr. Elliot is free on bond, Your  
8 Honor, and we have no objection to self surrender.

9 THE COURT: Okay. How long do you need to get  
10 your affairs in order, Mr. Elliot?

11 Have you arranged for child care for your  
12 daughter?

13 MR. LAWSON: Judge, they're talking with his  
14 wife. They're doing that now. He's asking for, like, 60  
15 to 90 days, which I think that's what -- I don't know how  
16 long it normally takes.

17 THE COURT: I think they told me it's going to  
18 take about three weeks for designations.

19 I'll give you 60 days.

20 MR. LAWSON: Okay. He's indicated to me, too,  
21 that within the last couple of weeks he just got custody of  
22 his daughter, so he's going to have to deal with that also.

23 THE COURT: I know he has custody of his  
24 daughter. That was my concern. I'm trying to think back  
25 in the old days when I practiced domestic relations, if

1 you're going to need a hearing on a custody issue.

2 MR. LAWSON: He's indicating he believes from his  
3 domestic relations attorney he can give somebody power of  
4 attorney.

5 THE COURT: All right. Good. Great.

6 All right. Then, Mr. Elliot, I am going to allow  
7 you to self surrender to the Bureau of Prisons. During the  
8 interim period until you're required to surrender to the  
9 Bureau of Prisons, I'm going to order you to abide by all  
10 the conditions and requirements of your current bond. In  
11 particular, I want to remind you that, under the conditions  
12 of your current bond, you're prohibited from committing  
13 another federal, state or local crime.

14 It's the judgment of the Court that you will be  
15 permitted to self surrender to the institution assigned by  
16 the Bureau of Prisons at a date designated by the Bureau of  
17 prisons, but no sooner than -- since it's almost the end of  
18 January, why don't we go to the beginning of April. How  
19 about April the 1st?

20 MR. LAWSON: Thank you, Judge.

21 THE COURT: And crimes include, Mr. Elliot, no  
22 DUI's.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Because, if you're back in front of  
25 me before then, you're going off right away.

1           Is there anything further to come before the  
2 Court at this time?

3           MR. BRICHLER: No, Your Honor.

4           MR. LAWSON: No, Judge.

5           THE COURT: All right. Good luck to you,  
6 Mr. Elliot.

7           Thank you everyone.

8           MR. LAWSON: Thank you, Judge.

9           PROCEEDINGS CONCLUDED AT 11:20 A.M.

10

11           C E R T I F I C A T E

12           I, Betty J. Schwab, the undersigned, do  
13 hereby certify that the foregoing is a correct  
14 transcript from the record of the proceedings in  
15 the above-entitled matter.

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17

Betty J. Schwab  
BETTY J. SCHWAB, RPR  
Official Reporter

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